

that relationship. If the individual subsequently establishes a new customer relationship with the bank, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery*. When a bank is required to deliver an opt out notice by this section, the bank must deliver it according to § 40.9.

#### § 40.8 Revised privacy notices.

(a) *General rule*. Except as otherwise authorized in this part, a bank must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a non-affiliated third party other than as described in the initial notice that the bank provided to that consumer under § 40.4, unless:

(1) The bank has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The bank has provided to the consumer a new opt out notice;

(3) The bank has given the consumer a reasonable opportunity, before the bank discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples*. (1) Except as otherwise permitted by §§ 40.13, 40.14, and 40.15, a bank must provide a revised notice before it:

(i) Discloses a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Discloses nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the bank discloses nonpublic personal information to a new nonaffiliated third party that the bank adequately described in its prior notice.

(c) *Delivery*. When a bank is required to deliver a revised privacy notice by this section, the bank must deliver it according to § 40.9.

#### § 40.9 Delivering privacy and opt out notices.

(a) *How to provide notices*. A bank must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice*. A bank may reasonably expect that a consumer will receive actual notice if the bank:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, posts the notice on the ATM screen and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice*. A bank may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its branch or office or generally publish advertisements of its privacy policies and practices;

(ii) Sends the notice via electronic mail to a consumer who does not obtain a financial product or service from the bank electronically.

(c) *Annual notices only*. A bank may reasonably expect that a customer will receive actual notice of the bank's annual privacy notice if:

(1) The customer uses the bank's web site to access financial products and services electronically and agrees to receive notices at the web site and the bank posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or